



Town of Mashpee

*16 Great Neck Road North
Mashpee, Massachusetts 02649*

BOARD OF HEALTH – PUBLIC SESSION

Minutes of the Meeting of May 19, 2016

Board Members Present:

Kalliope Egloff, Chair
Lucy Burton, Co-Chair
Brian Baumgaertel, Clerk

Also Present:

Glen Harrington, Health Agent

Chair Kalliope Egloff called the meeting to order at 7:00 PM.

APPOINTMENTS

7:15 PM – Public Hearing – Tobacco 21.

Kalliope Egloff called the Public Hearing for Tobacco 21 to amend the regulation to order.

Lucy Burton commented that the Board is looking to review the current smoking regulation restricting the sale of tobacco products.

Kalliope Egloff stated that the public is welcome to give their comments by approaching the microphone and stating their name and address. Ms. Egloff requested that a comment, question, or concern be raised only once, to keep the comment at under 5 minutes, and to be respectful of others in the room. Public officials will be first to express their opinion.

Bob Collette, Director of the Cape Cod Regional Tobacco Control Program, introduced himself to the Board. Mr. Collette commented that there have been 115 towns across Massachusetts that have adopted this provision in the last 2 years. On Cape Cod 5 towns adopted the provision and 5 towns are considering adopting the regulation. Tobacco 21 has been very successful, and Mr. Collette encourages the Board to move forward with it.

Ms. Egloff requested that others in support of the Tobacco 21 approach the microphone. Since no one approached the podium, Ms. Egloff inquired if there was anyone in opposition of the regulation to approach the microphone.

Saeed Chaudhry, owner of Commons Convenience located at 414 Nathan Ellis Highway, introduced himself to the Board. Mr. Chaudhry commented that there would be a tremendous loss of business unless all towns adopt the regulation.

Maripe, representing the Mashpee Country Store located at 387 Main Street, introduced herself to the Board. Maripe stated that this is a family-owned operation that has existed for many years. Since tobacco sales are profitable, she suggested to raise the age to 19 rather than 21.

Michelle Bell, representing The Vapeway at 387 Nathan Ellis Highway, introduced herself to the Board. Ms. Bell remarked that The Vapeway is not tobacco but an alternative to tobacco. Ms. Bell has employees under the age of 21 and feels that she should not have to dismiss them if the age limit for tobacco purchase is increased to 21. The change in the tobacco regulation will definitely affect their business.

Since no one else approached the microphone, Ms. Egloff asked if there was anyone not in support and not in opposition to Tobacco 21.

Stephen Rafferty, a member of the Falmouth Board of Health, introduced himself to the Board. Mr. Rafferty commented that the age limit to purchase tobacco products should be raised to 21. Medical studies have proven that the frontal lobe of the brain is still developing in the 15-17 year age group; therefore, the level of addiction is greater at a young age.

Ms. Egloff offered those that just entered the meeting to approach the microphone to speak in support or against Tobacco 21.

Since there were no further participants, Kalliope Egloff closed the public portion of the meeting.

Glen Harrington commented that the Falmouth Board of Health has asked the Mashpee Board of Health to address this issue because the legal retail sales age to purchase tobacco products was raised to 21. The Falmouth retailers at that time voiced their opinion as far as the loss of business if the consumers were to come to Mashpee to purchase tobacco products.

Mr. Harrington remarked that the medical information provided had been reviewed and suggested that the brain does not fully form until the ages of 21-25. Raising the legal access age to 21 will mostly affect the 15-17 year olds. The Board also reviewed nicotine and electronic cigarettes. The original use for electronic cigarettes was for cessation. Now that the flavored solutions for vaping have been marketed, surveys indicate youths that try electronic cigarettes are at a higher risk to use conventional cigarettes.

An attorney that represents the tobacco retail outlets had submitted a letter in opposition of the regulation. It stated that those less than 21 years of age are obtaining tobacco products from social sources and not from retailers. The Board of Health regulation includes the prohibition for minors to possess and for adults to purchase tobacco and nicotine delivery products for minors.

Lucy Burton thanked everyone that attended the Public Hearing on Tobacco 21. Ms. Burton has learned that children do not have the cognitive ability to handle the decision for smoking.

Brian Baumgaertel discussed statistics that he researched and discovered that there is a higher mortality rate among students.

Kalliope Egloff stated that the Board of Health is interested in a regional approach across the boards on a number of different issues, especially Tobacco 21. The age limit may be considered for the sale of tobacco for the retailer because of peer pressure.

The Board of Health has requested that Glen Harrington prepare a draft of the existing regulation for consideration at the next meeting.

Glen Harrington requested that the Board amend the penalty portion of the existing tobacco regulation for two violations of sales to minors within 48 months to a five-day suspension and not the current seven days.

Lucy Burton made a motion that the Board of Health amend the penalty portion of the current regulation for a second offense within a 48-month period to keep the fine the same but to amend the license suspension language "up to 7 days at the Board's discretion", and for the third offense "up to 30 days at the Board's discretion" leaving the fines the same. Brian Baumgaertel seconded the motion. The motion was unanimously approved.

Kalliope Egloff closed this portion of the Public Hearing meeting and thanked the public for attending and voicing their opinion.

7:45 PM – Alltown Mashpee – Tobacco Violation.

Glen Harrington stated that on April 16, 2016, the Cape Cod Regional Tobacco Control Program performed a compliance check at Alltown Mashpee and other Mashpee tobacco retailers. Alltown Mashpee failed the compliance check by selling tobacco products to a minor. This is the second offense within 48 months, so a fine of \$200 and a seven consecutive business day suspension is the penalty for the violation. The first offense occurred on February 15, 2016. Payment of the \$200 fine was received along with a response letter.

Glen Carroll, Regional Manager for Global Montello Group, introduced himself to the Board.

Mr. Carroll commented that all of the employees attend an extensive training program. The employees are required to take the initial training and then quarterly trainings. They are taught to recognize the purchaser and to obtain proper identification. Whenever a tobacco product is purchased at the register, the employee is required to enter the customer's date of birth. This particular employee choose to enter a different date of birth and did not request identification. The employee was terminated once Global Montello Group received notification of the violation. Loss of license creates a hardship for the company; therefore, Mr. Carroll would like cashiers to be held accountable, as is done in Rhode Island and Connecticut.

Lucy Burton made a motion that the Board of Health suspend the Tobacco Sales License for 5 consecutive business days beginning June 6, 2016, through June 10, 2016, for Global Montello Group, Alltown Mashpee. Brian Baumgaertel seconded the motion. The motion was unanimously approved.

7:50 PM – Title V Variance Request – 78 Nick Trail.

Glen Harrington commented that this is a straight upgrade of a septic that is on a very small lot located at 78 Nick Trail. The dwelling is currently serviced by cesspools. The variance requested for the septic tank to the abutter's property line requires review by the Board of Health. The Soil Absorption System was designed for more than a four bedroom capacity. However, this property is located in Zone II; therefore, the owners and buyers understand that the dwelling cannot have more than the three primary bedrooms.

Jeff Ryther of BSS Design, representing William Hasler, the buyer of 78 Nick Trail, introduced himself to the Board.

Mr. Ryther stated that this project is proposing to pump and abandon the three old cesspools on the property located at 78 Nick Trail and to fully upgrade the subsurface sewage disposal system. The septic system upgrade has been designed for a 3-bedroom single family house. Mr. Ryther is requesting the following variances:

1. A 3' variance, septic tank to the side lot line, for a 7' setback.
2. A 3' variance, septic tank to the cellar wall, for a 7' setback.
3. A 3' variance, Soil Absorption System to the cellar wall, for a 17' setback.
4. A 9.5' variance, Soil Absorption System to the bulkhead, for a 10.5' setback.

Lucy Burton made a motion that the Board of Health approve the variances requested for 78 Nick Trail. Brian Baumgaertel seconded the motion. The motion was unanimously approved.

7:55 PM – Board of Health Cesspool Regulation – 78 Nick Trail.

Glen Harrington stated that the owner of 78 Nick Trail is requesting a variance to have the property transferred without the benefit of upgrading the failed cesspool on the property prior to the sale. The buyer is requesting a date of September 7, 2016, to repair or replace the septic system. The septic system has a newly engineered plan so additional time will not be necessary for producing an engineered design.

Attorney Christopher Kirrane representing the applicant of 78 Nick Trail, introduced himself to the Board.

Attorney Kirrane commented that the date of transfer is scheduled for June 23, 2016. The owners live in Ohio and may only use the property around the holidays.

Mr. Harrington remarked that the Board of Health has allowed use of cesspools during the summer season and have permitted 90 days for installation. The cesspools are not in groundwater; they are not overflowing; and they are not backing up. There is no immediate threat for the Board to set a timeframe for installation.

The Board of Health discussed setting dates for the submission of the executed enforceable agreement and the final date of installation with the Certificate of Compliance issued. The Board will not grant extensions for the Certificate of Compliance nor the installation.

Lucy Burton made a motion that the Board of Health approve the variance as requested for 78 Nick Trail with the condition that the executed enforceable agreement be submitted within 14 days and the system upgrade with the Certificate of Compliance issued by September 7, 2016. Brian Baumgaertel seconded the motion. The motion was unanimously approved.

NEW BUSINESS

1. Board of Health Re-Organization: New Member.

Lucy Burton made a motion that the Board of Health nominate Brian Baumgaertel as Clerk of the Board of Health. Kalliope Egloff seconded the motion. The motion was unanimously approved.

Kalliope Egloff made a motion that the Board of Health nominate Lucy Burton as Co-Chair of the Board of Health. Brian Baumgaertel seconded the motion. The motion was unanimously approved.

Lucy Burton made a motion that the Board of Health nominate Kalliope Egloff as Chair of the Board of Health. Brian Baumgaertel seconded the motion. The motion was unanimously approved.

2. Sign Expense Warrants. The Board members signed the expense warrants.

3. Review/Approve BOH Public Session Minutes: May 5, 2016.

Lucy Burton made a motion that the Board of Health approve the Public Session minutes of May 5, 2016, as amended. Kalliope Egloff seconded the motion. The motion was unanimously approved.

4. Request for 2016 Food Service and Tobacco Permits: Oak and Ember (36 South Street).

Glen Harrington commented that the applications, fees, menu, and ServSafe certificate have been submitted for Oak and Ember. The pre-operation inspection has been performed. No changes were made to the kitchen. This is merely a name change to the previous name and use. Cigars will be sold and smoked outdoors under the open awning.

Lucy Burton questioned the use of tobacco products at Oak and Ember. Mr. Harrington commented that Oak and Ember previously possessed a tobacco sales permit.

Brian Baumgaertel stated that the Allergen Awareness Certificate was missing.

Lucy Burton made a motion that the Board of Health approve the 2016 Food Establishment and Tobacco Sales Permits for Oak and Ember located at 36 South Street with the condition of receipt of the Allergen Awareness Certificate. Brian Baumgaertel seconded the motion. The motion was unanimously approved.

5. Request for 2016 Mobile Food Permit: Shawnas Dream Machine.

Glen Harrington remarked that the application, fees, ServSafe and Allergen Awareness Certificates, and the State Hawkers and Peddler's license for Shawnas Dream Machine have been provided. The pre-operation inspection has not been performed; the Ice Cream Truck certification from the police department has not been submitted; and there is no evidence of working within a licensed commissary. The owner, Shawna O'Brien, has been notified of the deficiencies.

Brian Baumgaertel made a motion that the Board of Health continue the 2016 Mobile Food Permit for Shawnas Dream Machine until the required paperwork is provided. Kalliope Egloff seconded the motion. The motion was unanimously approved.

6. Request for 2016 Retail Food and Tobacco Permits: Mashpee Mini Mart (401 Nathan Ellis Hwy).

Glen Harrington stated that Mashpee Mini Mart is a change of ownership. The new owners are assuming the business from BND Dollar Saver located at 401 Nathan Ellis Highway and would like to open on May 24, 2016. A pre-operation inspection is required.

Brian Baumgaertel commented that there are several stores selling tobacco products within a half mile of Mashpee High School.

Lucy Burton made a motion that the Board of Health approve the 2016 Food Establishment and Tobacco Sales Permits for Mashpee Mini Mart pending a pre-opening inspection. Brian Baumgaertel seconded the motion. The motion was unanimously approved.

7. Request for Temporary Food Permit Annual Event – “The Power of Home”: Mashpee Village.

Glen Harrington stated that Mashpee Village would like to establish this program as an annual event. Ebony Steele is the ServSafe person and will be present at the event. This is a non-profit organization; therefore, there is no fee for the application. The inspection will take place the day of the event.

Lucy Burton made a motion that the Board of Health approve the Temporary Food Establishment permit for “The Power of Home” at Mashpee Village. Brian Baumgaertel seconded the motion. The motion was unanimously approved.

OLD BUSINESS

1. Housing Compliance Update: 394 Cotuit Road.

Glen Harrington commented that Erika Woods of the Cape Cod Hoarding Task Force is requesting the Board of Health to set some strict timeframes and goals for the conclusion of the property located at 394 Cotuit Road, which had been a hoarding issue and hoarding cleanup. There is an agreement in place with Ms. McFarland-Richter that expires by the first meeting in June. A final inspection will need to be performed by the Health Agent. Mr. Harrington would like to prepare the original photographs with the final pictures as this is an extreme success story.

Kalliope Egloff remarked that this has been a challenge for many years and remarkable progress has taken place. Ms. Egloff would like to see this as a learning opportunity for the Town by presenting the process to Human Services and to the Board of Selectmen.

2. Farmer’s Market: Mashpee Commons.

Glen Harrington remarked that a ServSafe person will need to be appointed for the Farmer’s Market at Mashpee Commons. In the past the Board approved a permit fee of \$100 for each weekend; and one person, who is ServSafe certified, is designated to oversee all of the vendors. Mr. Harrington would like to verify that the same people will be in charge. Mary Derr originally informed Mr. Harrington that nothing has changed from last year.

Kalliope Egloff suggested that Glen Harrington be authorized to use his professional opinion to issue this permit pending the ServSafe person. Mr. Harrington commented that he will obtain the Chair’s approval prior to allowing the Farmer’s Market to operate. If possible, Ms. Egloff would like recycling and food waste composting to be utilized.

3. Septic Loan Waiver: 251 Great Neck Road North.

Glen Harrington stated that he spoke to the Town Treasurer regarding the septic loan waiver for 251 Great Neck Road North. At the previous meeting the Board recommended using the Community Septic Loan Program in place of the promissory note. The Town Treasurer will contact Town Counsel for advice.

ADDITIONAL TOPICS

None.

DISCUSSION**1. Meeting Update – Mashpee Cares Committee Meeting: Glen Harrington.**

Glen Harrington remarked that the Mashpee Cares Committee Meeting was cancelled.

NEXT MEETING

The next meeting of the Board of Health is scheduled for Thursday, June 2, 2016, at 7:00 PM. As there was no further business, Lucy Burton made a motion to adjourn the Public Session Meeting of the Board of Health at 8:32 PM. Brian Baumgaertel seconded the motion. The motion was unanimously approved.

Respectfully submitted,

Frances Boulos
Administrative Assistant
Mashpee Board of Health

attachments